IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WANDA McCANN-SMITH,

Plaintiff,

v.

ST. MARY'S HOSPITAL,

Defendant.

OPINION and ORDER

11-cv-200-slc[1]

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Plaintiff Wanda McCann-Smith has filed a complaint in which she alleges that her former employer, defendant St. Mary's Hospital, has discriminated against her because she is black and retaliated against her because she complained about the discrimination. Because plaintiff is proceeding in forma pauperis under 28 U.S.C. § 1915, I must screen the complaint to determine whether it states a claim upon which relief may be granted. Having reviewed the complaint, I conclude that plaintiff states a claim under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, and 42 U.S.C. § 1981.

Plaintiff's allegations are similar to those in McCann-Smith v. St. Mary's Hospital, No. 10-cv-546-slc (W.D. Wis. 2010), a case that I dismissed without prejudice to plaintiff's

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[1] I am exercising jurisdiction over this case for the purpose of this order.

refiling it after she completed the proceedings before the Equal Employment Opportunity Commission. As in her previous complaint, plaintiff alleges that she was employed by defendant for four years and that she has been disciplined under "numerous circumstances" when "the white employees were not." She lists several instances in which she says she was "written up" because of her race. In addition, she alleges that defendant terminated her in retaliation for complaining about the retaliation and filing a charge with the EEOC.

Both Title VII and § 1981 prohibit racial discrimination and retaliation in the workplace. 42 U.S.C. § 2000e-2(a) (Title VII prohibits discrimination "because of race"); 42 U.S.C. § 2000e-3 (Title VII prohibits retaliating against employee for "oppos[ing]" discrimination prohibited by statute or "because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding" with EEOC); Walker v. Abbott Laboratories, 340 F.3d 470, 475-77 (7th Cir. 2003) (§ 1981 prohibits racial discrimination in employment contracts, even at-will relationships); Stephens v. Erickson, 569 F.3d 779, 786 (7th Cir. 2009) (§ 1981 prohibits retaliation because of race). At this stage, plaintiff's allegations of discrimination and retaliation are sufficient to state a claim upon which relief may be granted. Swanson v. Citibank, NA, 614 F.3d 400 (7th Cir. 2010) (complaint alleging discrimination is sufficient if it "identifies the type of discrimination that she thinks occur[red] . . ., by whom . . . and when").

Plaintiff should know that she will not be able to stand on her allegations at later

stages in the case. To prove her claims at summary judgment or trial, she will have to come forward with specific facts showing that a reasonable jury could find in her favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ P. 56.

With respect to her discrimination claims, plaintiff will have to show that her race was one of the reasons she was suspended and terminated. Hossack v. Floor Covering Associates of Joliet, Inc., 492 F.3d 853, 860 (7th Cir. 2007). Similarly, to prevail on her retaliation claim, plaintiff will have to show that her allegation of racial discrimination was one of the reasons she was disciplined and terminated.

Discrimination and retaliation claims are classic examples of claims that are easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove her claim with the allegations in her complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or her personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007).

A plaintiff can prove discrimination and retaliation claims in various ways. For example, plaintiff may adduce evidence that defendant treated similarly situated employees who are not African American better than her, Scaife v. Cook County, 446 F.3d 735, 739 (7th Cir. 2006), or that defendant consistently treated poorly other black employees or employees who complained about discrimination. Hasan v. Foley & Lardner LLP, 552 F.3d

520, 529 (7th Cir. 2008). A "similarly situated" employee is someone who is "directly comparable" to the plaintiff in all material respects." Grayson v. O'Neill, 308 F.3d 808, 819 (7th Cir. 2002). Relevant factors may include whether the employees had the same job description, were subject to the same standards, were subject to the same supervisor and had comparable experience, education and other qualifications. Bio v. Federal Express Corp., 424 F.3d 593, 597 (7th Cir. 2005).

In addition, plaintiff may rely on evidence of suspicious timing or discriminatory statements by a decision maker or statements suggesting that the decision maker was bothered by plaintiff's complaints about discrimination. E.g., Mullin v. Gettinger, 450 F.3d 280, 285 (7th Cir. 2006); Culver v. Gorman & Co., 416 F.3d 540, 545-50 (7th Cir. 2005). However, even if plaintiff was fired a short time after she complained, that closeness in time is rarely enough to prove an unlawful motive without additional evidence. Mobley v. Allstate Insurance Co., 531 F.3d 539, 549 (7th Cir. 2008) ("Evidence of temporal proximity, however, standing on its own, is insufficient to establish a causal connection for a claim of retaliation.")

Evidence of discrimination may include a showing that defendant's reasons for its actions are pretextual. Simple v. Walgreen Co., 511 F.3d 668 (7th Cir. 2007). A pretext is more than just a mistake or a foolish decision; it is a lie covering up a true discriminatory or retaliatory motive. Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006).

"[T]he question is never whether the employer was mistaken, cruel, unethical, out of his head, or downright irrational in taking the action for the stated reason, but simply whether the stated reason was his reason: not a good reason, but the true reason." Id. at 417-18. A plaintiff may show that a decision is pretextual with evidence that an employer's stated motive did not actually motivate the decision, Freeman v. Madison Metropolitan School District, 231 F.3d 374, 379 (7th Cir. 2000), that defendant "grossly exaggerated" the seriousness of an incident, Peirick v. Indiana University-Purdue University Indianapolis Athletics Dept., 510 F.3d 681, 693 (7th Cir. 2007), that defendant violated its own policies and procedures, Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971, 976-77 (7th Cir. 2006), or with any other evidence tending to show that the employer's stated reason is false.

ORDER

IT IS ORDERED that

1. Plaintiff Wanda McCann-Smith is GRANTED leave to proceed on her claims that defendant St. Mary's Hospital violated her rights under Title VII of the Civil Rights Act and 42 U.S.C. § 1981 by disciplining and terminating her because of her race and because she complained about the discriminatory treatment.

2. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer

that will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

3. Plaintiff should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of her documents.

4. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendant.

Entered this 4th day of April, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge